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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954.

No. 165

EVELYN LEADMAN, *Petitioner,*

vs.

THE GREYHOUND CORPORATION, *Respondent.*

PETITION FOR WRIT OF CERTIORARI, TO THE COURT OF APPEALS OF KENTUCKY.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954.

No. .....

EVELYN LEADMAN, *Petitioner,*

vs.

THE GREYHOUND CORPORATION, *Respondent.*

PETITION FOR WRIT OF CERTIORARI, TO THE COURT OF APPEALS OF KENTUCKY.

The petitioner, Evelyn Leadman, shows to the Court the following facts, upon which she seeks a writ of certiorari herein, to the Court of Appeals of Kentucky:

(a) On February 4, 1955, the Court of Appeals of Kentucky, delivered an opinion in a case before it, styled "The Greyhound Corporation, Appellant, vs. Evelyn Leadman, Appellee." This opinion has not been officially reported, and is held in abeyance pending the granting or refusal of this writ. The opinion is to be found at pages 87-88 of the certified transcript, and is appended to this petition in "Appendix A" *post.*

(b) The grounds on which this petition rests are:

(i) The judgment of the Court of Appeals of Kentucky, is contained in its mandate, which issued and was entered in said Court, March 25, 1955.

(ii) The Court overruled appellee's petition for rehearing in said case, March 25, 1955, and entered mandate and judgment the same day.

(iii) Jurisdiction is conferred on this Court to grant this writ by 28 U. S. C. A., Sec. 1651(3).

(c) The question presented is:

> Where one is seriously and permanently injured, while riding on a bus, operated by respondent, through an employed agent, as operator, through the carelessness and negligence of the operator, and sues both the owner of the bus, and the operator, and recovers a verdict and judgment against the principal alone, is she accorded "*due process*" by a Court that adjudges and holds that she can not have the fruits of her recovery, simply because the trial jury found nothing against the servant, and failed to find that the servant was negligent in the operation of the bus?

(d) The Constitutional provision on which petitioner claims her right in this instance, is that portion of the Fourteenth Amendment to the Constitution of the United States which reads and provides:

> "* * * nor shall any state deprive any person of life, liberty or property, without due process of law; * * *." (Constitution, Amendment XIV(1)).

(e) Evelyn Leadman, took passage at Lexington, Kentucky, for transportation, as a paid passenger, to Hazard, Kentucky. While the bus was travelling through

Breathitt County, Kentucky, and was crossing a bridge, over Quicksand Creek, it was so carelessly and negligently operated by respondent's servant that it overturned, seriously and permanently injuring her. She sued, in the Circuit Court for Breathitt County, Kentucky, to recover for her injuries, both against respondent and its servant, Hamm, the bus driver. The jury returned into Court, a verdict in her favor, against respondent, alone, for $15,000.00, on which judgment was entered. On appeal, as noted heretofore, the Court of Appeals of Kentucky held that since the trial jury had said nothing about the respondent's servant, the judgment against respondent was void. On a petition for rehearing the Court modified its opinion so as to decide that its holding did not violate the due process clause of the Federal Constitution, and overruled the petition to re-hear.

(f) The federal question, that is the applicability of the due process clause of the Federal Constitution, to the facts and circumstances of the case, was raised in the Court of Appeals of Kentucky, for the first time, in petitioner's petition for rehearing filed March 3, 1955.

(g) There is appended to this petition, as "Appendix B," a copy of the mandate and judgment of the Court of Appeals of Kentucky, entered March 25, 1955. There is also appended hereto as "Appendix C," a copy of the order of March 25, 1955, overruling petitioner's petition for rehearing.

(h) Petitioner first sued the Southeastern Greyhound Lines and Hamm to recover for her injuries. It was alleged that the bus on which passage was taken was

owned and operated by Southeastern Greyhound Lines, and that Hamm was a servant of that corporation, charged with the duty of operating the bus. Later it was made to appear that the Southeastern Greyhound Lines had transferred all its property and franchises to the respondent, and respondent then became a party to the action, as principal, and Hamm was left a party, as agent of the principal.

It was alleged that through the negligence of the agent, Hamm, the injuries to petitioner were brought about, and judgment was demanded against both principal and agent. On the trial of the case in the Circuit Court for Breathitt County, Kentucky, the Court charged the jury, *inter alia*:

> "You may find a verdict for the plaintiff against one of the defendants, and for the other; or, you may find a verdict in one amount against one of the defendants, and a different amount against the other; or, you may find a joint verdict against all of the defendants." (R. 47).

Under that instruction, the jury found and returned into Court, the following verdict:

> "We the jury do agree and find for the plaintiff, in the amount of fifteen thousand ($15,000.00), dollars against the Greyhound Corporation.
>
> (Signed): Linville Carpenter,
> One of the jury." (R. 41).

The Court of Appeals of Kentucky, ruled that petitioner could not have advantage of the judgment rendered on this verdict, because the trial jury had not, (a), found against the defendant, Hamm, the servant of the Grey-

hound Corporation, or (b), because it had not said he was negligent in the operation of the bus, although the bus turned over.

It is the position of petitioner, that the ruling of the Court of Appeals was erroneous, and denied her due process of law, under the facts and circumstances of this case, since the jury could not, and would not have found against the Greyhound Corporation, unless it believed that the turning over of the bus was due to the negligence and carelessness of Hamm, the servant of the corporation, and the operator of the bus, under employment by the corporation.

The Court of Appeals of Kentucky failed to take note of the following: (a) Petitioner could have sued the Greyhound Corporation alone, (b) and the operator of the bus was neither an indispensable, or necessary party to the action.

Wherefore, the premises considered, the petitioner, Evelyn Leadman, prays:

(a) That this Court may grant the writ of certiorari sought hereby, to the Court of Appeals of Kentucky; and,

(b) That on review, the Court may reverse the judgment of the Court of Appeals of Kentucky, and affirm the judgment of the Circuit Court for Breathitt County, Kentucky.

CLEON K. CALVERT,
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Pineville, Kentucky,
Attorney for Petitioner.

Pineville, Kentucky,
June 8, 1955.

COURT OF APPEALS OF KENTUCKY,

February 4, 1955.

The Greyhound Corporation, Appellant,

vs.

Evelyn Leadman, Appellee.

Appeal from Breathitt Circuit Court, Ervine Turner, Judge.

Opinion of the Court by Judge Cammack Reversing.

This is an appeal from a judgment for $15,000 against the Greyhound Corporation for the negligence of its driver, Marion Clay Hamm, in operating one of its busses in such a careless and negligent manner as to cause it to collide with a steel bridge and injure Evelyn Leadman. The Corporation's ground for reversal is that it can not be held liable because there was no judgment against its driver.

Mrs. Leadman brought suit against the Corporation and its driver in 1952, alleging that she was injured as the result of the driver's negligence. The case proceeded to trial and the jury returned a verdict against the appellant at the August term, 1952. This appeal follows.

The only question before us is—Where there is no motion for a new trial, and a bill of exceptions is not filed, will the pleadings support the judgment? Civil Code of Practice, Section 340.

Mrs. Leadman based her recovery upon the negligence of the driver in operating the bus. The jury returned a verdict in her favor and against the Corporation only,

thereby finding the driver not guilty of any negligence. This verdict can not stand because the Corporation's liability is based upon the negligence of its driver. Illinois Central R. Co. v. Applegate's Adm'x. 268 Ky. 458, 105 SW 2d 153; Lewis v. Devasher, Ky., 267 SW 2d 938.

The appellee has asserted that a reversal of this judgment, upon what appellee calls a "technicality," would result in depriving her of property rights without due process of law, in violation of the 14th Amendment to the Constitution of the United States. We find no merit in this contention. Remedies for the situation created by the verdict were available to the appellee, but she did not utilize them.

The judgment is reversed, with directions that a judgment be entered in favor of the Corporation.

ATTORNEYS FOR APPELLANT:

Stoll, Keenon & Park
John L. Davis
Lexington, Ky.

ATTORNEYS FOR APPELLEE:

Napier & Napier,
Hazard, Kentucky

ORDERS—KENTUCKY COURT OF APPEALS

Winter Term February 4th, 1955

The Greyhound Corporation, Appellant,

vs.

Evelyn Leadman, Appellee.

Appeal from a Judgment of the Breathitt Circuit Court

The Court being sufficiently advised, it seems to them the judgment herein is erroneous.

It is therefore considered that said judgment be reversed with directions that a judgment be entered in favor of the Corporation; which is ordered to be certified to said Court.

It is further considered that the appellant recover of the appellee its costs herein expended.

Issued: March 25, 1955.

APPENDIX "C."

Order of the Court of Appeals of Kentucky, entered March 25, 1955, Modifying Opinion of February 4, 1955, and Overruling Petition for Rehearing (R. 90).

ORDERS—KENTUCKY COURT OF APPEALS

Winter Term, March 25th, 1955

The Greyhound Corporation v: Leadman

Breathitt

The Court being sufficiently advised, the opinion delivered herein is modified on its face, and it is considered that the appellee's petition for rehearing be and the same is hereby overruled.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

No. .....

EVELYN LEADMAN,
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vs.

THE GREYHOUND CORPORATION,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

JURISDICTION.

The Petition for Writ of Certiorari filed herein contains a statement to the effect that "Jurisdiction is conferred on this Court to grant this Writ by 28 U. S. C. A., Sec. 1651 (3)." (Emphasis supplied, see page 2, Petition for Writ.) While we have no doubt that under the broad discretionary power that rests in this Court, it has the power to grant the Writ in question, we earnestly insist that the facts in the instant case are utterly insufficient to warrant the exercise of that power. In the first place, without being facetious, we have searched diligently and

we find no subsection (3) to 28 U. S. C. A. 1651. The Petitioner has not favored us and the Court with a quotation of the precise statutory provision or rule upon which jurisdiction supposedly rests, and in the absence of such we are not informed of the provision upon which the contention of jurisdiction is based. However, Subsection (a) of 28 U. S. C. A. 1651 appears sufficiently broad to authorize this Court to exercise that power in almost any situation presented. However, we earnestly insist that the facts in the present case are clearly insufficient to justify the issuance of the requested Writ.

STATEMENT OF THE CASE.

This lengthy litigation began with a suit by the Petitioner in the Breathitt Circuit Court of Kentucky against Southeastern Greyhound Lines and Marion Clay Hamm, one of its drivers for personal injuries sustained in a bus accident. Separate answers were filed by the driver and Southeastern Greyhound Lines. In its answer, Southeastern Greyhound Lines denied all allegations of negligence and pleaded that it and Greyhound Corporation were the same corporate entity. It stated that Southeastern Greyhound Lines was an operating division of Greyhound Corporation and not a separate corporation. A jury trial was had upon the issues of negligence and a verdict was returned in favor of the Petitioner against the Respondent only. (See page 4, Petition of Writ.) Nothing was stated in the verdict about Marion Clay Hamm, the co-defendant and driver of the bus, and under a long line of unbroken decisions in this State, the failure of a jury to find either for or against a defendant is a finding in his favor. Acting upon the basis of these decisions, an appeal was taken to the Court of Appeals of Kentucky, where the case was reversed and remanded to the Breathitt Circuit Court with directions to enter a judgment for the Respondent. (See the opinion attached to the Petition for Writ.) Following

this, the Petitioner filed a Petition for Rehearing with the Court of Appeals wherein she asserted for the first time that the decision, as rendered, deprived her of property without due process of law in violation of her rights under the 14th Amendment to the U. S. Constitution. The Court of Appeals peremptorily cast this assertion aside but graciously did what it could to preserve the question for the Petitioner by inserting a short paragraph in which it gave recognition to the contention but stated that it was entirely without merit.

Thereafter, mandate issued from the Court of Appeals to the Breathitt Circuit Court and in accordance with it, judgment was entered and the trial court dismissed the complaint. This petition for Writ of Certiorari followed.

Although it is phrased somewhat differently in the Petition for Writ (See page 2 of Petition), it seems to us that the question presented to this Court at this time is as follows:

> Where both master and servant are sued for negligence and the jury returns a verdict in favor of the plaintiff and against the master alone, and the verdict is set aside because the rule under State Law is that such a verdict cannot stand since it is a finding in favor of the servant and a master is not liable for the alleged negligence of his servant unless the servant is also liable, does the application of such a substantive rule of law operate to deprive one of property without due process of law in violation of the 14th Amendment to the U. S. Constitution and consequently justify this Court in granting a Writ of Certiorari?

The phraseology of this question in the Petition for Writ is obviously designed to procure the sympathy of the Court for a disappointed litigant. The authorities touching upon this point will now be considered.

ARGUMENT.

A Writ of Certiorari Will Not Issue From This Court to Change or Modify Rulings of State Courts Upon Substantive Questions of Law.

The ruling of the Court of Appeals of Kentucky is based upon an ancient but firmly established rule of substantive law. That rule of law is expressed in the simple and well known maxim of respondeat superior. Where liability of the master is attempted to be predicated upon the negligence of a servant, that master is not liable under the doctrine of respondeat superior unless the servant is also found to be liable. That rule is almost as ancient as the history of our system of jurisprudence itself. However, whether the rule as applied by our court is in accord with the weight of authority on the point or not, whether it is correct or incorrect, certiorari will not issue from this Court to change or modify the ruling of a State Court upon a substantive rule of law. This rule is also of a rather ancient origin and we are unable to find where this Court has ever made a single departure from it. A case almost identical in principle with the case at bar is Allen v. Caterpillar Tractor Company, 96 F. 2d 937. That case involved a suit by the plaintiff against his employer for the recovery of damages suffered by him from injuries received through the inhalation of silica dust. It appeared from the complaint that in numerous cases the Supreme Court of Illinois had held that an employee could not recover damages from his employer under the factual situation presented. In his complaint the plaintiff alleged that these decisions of the Illinois Court were in violation of the due process clause of the 14th Amendment to the U. S. Constitution. Thus, it appears that the contention in that case is almost identical with that in the case at bar. In the foregoing case, this contention was summarily brushed aside by the Court for the following reason:

"Nor can we accept plaintiff's urge that the Illinois Supreme Court in so holding violated the due process clause of the Fourteenth Amendment of the United States Constitution. A contrary holding by the Supreme Court has settled this question. Patterson v. Colorado, 205 U. S. 454, 27 S. Ct. 556, 51 L. Ed. 879, 10 Ann. Cas. 689."

When the contention of the Petitioner in the case at bar is reduced to its simplest form, it is obvious that she desires nothing more than a review of the ruling of the Court of Appeals of Kentucky. This Court has declined such an invitation on numerous occasions. In the case of Central Land Company v. Laidley, 159 U. S. 103, 16 S. Ct. 80, this principle was stated very succinctly as follows:

"The power delegated to us is for the restraint of unconstitutional legislation by the States, and not for the correction of alleged errors committed by their judiciary."

The foregoing rule was stated for the Court by Mr. Justice Harlan in Tracy v. Ginzberg, 205 U. S. 170, 27 S. Ct. 461, in the following language:

"The plaintiff also insists that by the judgment of the supreme judicial court of Massachusetts he has been deprived of his property without the due process of law guaranteed by the 14th Amendment of the Constitution of the United States. This proposition is without merit. Within the meaning of that Amendment, the court, by its judgment, did not deprive the plaintiff of property without due process of law. He sought a decree adjudging that he was entitled to the money received by Ginzberg from O'Hearn. **The Court, proceeding entirely upon principles of general and local law, and giving all parties interested in the question an opportunity to be heard, decided that plaintiff had no right to that money. The decision of a state court, involving nothing more than the ownership of prop-**

erty, with all parties in interest before it, cannot be regarded by the unsuccessful party as a deprivation of property without due process of law, simply because its effect is to deny his claim to own such property. If we were of opinion, upon this record, that the money received by Ginzberg from O'Hearn really belonged to Tracy—still it could not be affirmed that the latter had, within the meaning of the Constitution, and by reason of the judgment below, been deprived of his property without due process of law. **Under the opposite view every judgment of a state court involving merely the ownership of property could be brought here for review—a result not to be thought of. The 14th Amendment did not impair the authority of the states, by their judicial tribunal, and according to their settled usages and established modes of procedure, to determine finally, for the parties before them, controverted questions as to the ownership of property, which did not involve any right secured by the Federal Constitution or by any valid act of Congress, or by any treaty. Within the meaning of that Amendment, a deprivation of property without due process of law occurs when it results from the arbitrary exercise of power, inconsistent with 'those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country.'** Den ex dem. Murray v. Hoboken Land & Improv. Co., 18 How. 272, 15 L. ed. 372; Bank of Columbia v. Okely, 4 Wheat. 235, 244, 4 L. ed. 559, 561. It cannot be said that the state court in this case, by its final judgment, departed from those usages or modes of proceeding."

In the case of Patterson v. Colorado et al., 205 U. S. 454, 27 S. Ct. 556, this court stated the principle in question in the following manner:

"But, in general, the decision of a Court upon a question of law, however wrong and however contrary to previous decisions, is not an infraction of the 14th Amendment merely because it is wrong or because earlier decisions are reversed."

In the present case the Petitioner selected the forum and the predicament that she now finds herself in was the result of her failure to take advantage of remedies which were provided under our law for the situation created by the verdict. This is indicated by the opinion of our Court of Appeals wherein it states as follows:

"Remedies for the situation created by the verdict were available to the appellee, but she did not utilize them."

To the effect that this litigation has now run its course and that the Petitioner has exhausted all possible avenues for relief from her situation, we quote as follows from Thompson v. Kentucky, 209 U. S. 340, 28 S. Ct. 533:

"At any rate, it is the province of the courts to interpret the laws of the state, and he who acts under them must take his chance of being in accord with the final decision. And this is a hazard under every law, and from which or the consequences of which we know of no security."

The plight of the Petitioner is well illustrated by the following language of this Court in Waters-Pierce Oil Co. v. Texas, 212 U. S. 86, 29 S. Ct. 220:

"In this case the defendant has had a trial in a court of justice duly established under the laws of the state; the question of its liability has been submitted to a jury. The judgment has been reviewed in an appellate court, and the correctness of the findings of fact and rulings of law in the lower court affirmed.

We are not prepared to say that there was a deprivation of due process of law."

The "due process" clause of the 14th Amendment was never intended to permit every litigant who was disappointed and dissatisfied with a decision of his highest state Court upon a substantive point of law to perfect an appeal to this Court. This Court is not and was never intended to serve as a watchdog over the highest courts of each of the forty-eight states of this country. The old cliche may be trite but it still appears appropriate at this time—there must be and is a finality to all litigation.

The foregoing principles are very clearly set forth by Mr. Justice VanDevanter in Enterprise Irrigation District v. Farmers Mutual Canal Co., 243 U. S. 157, 37 S. Ct. 318, in the following language:

> **"The claim that the court, in disposing of some of the questions, including that of the estoppel, misconceived or misapplied the statutory and common law of the state, and thereby infringed the due process and equal protection clauses of the 14th Amendment, requires but brief notice. The due process clause does not take up the laws of the several states and make all questions pertaining to them constitutional questions, nor does it enable this court to revise the decisions of the state courts upon questions of state law.** Sayward v. Denny, 158 U. S. 180, 186, 39 L. ed. 941, 943, 15 Sup. Ct. Rep. 777; Central Land Co. v. Laidley, 159 U. S. 103, 112, 40 L. ed. 91, 94, 16 Sup. Ct. Rep. 80; Castillo v. McConnico, 168 U. S. 674, 683, 684, 42 L. ed. 622, 625, 626, 18 Sup. Ct. Rep. 229. **The questions presented, other than those relating to the validity of the state Board's adjudication, all turned exclusively upon the law of the state, and the state court's decision of them is controlling.** Preston v. Chicago, 226 U. S. 447, 57 L. ed. 293, 33 Sup. Ct. Rep. 177; St. Louis & K. C. Land Co. v. Kansas City, 241

U. S. 419, 427, 60 L. ed. 1072, 1077, 36 Sup. Ct. Rep. 647; Old Colony Trust Co. v. Omaha, 230 U. S. 100, 116, 57 L. ed. 1410, 1416, 33 Sup. Ct. Rep. 967."

This court is, of course, aware of the magnitude of the additional burden that would be thrust upon it by the granting of a Writ of Certiorari in a case such as the one at hand. Recognition of the deluge of Petitions for Writs that would fall upon this Court if it should stray or depart from its established practice has often been made. Some of the cases referred to previously herein contain statements to this effect. This Court in the very recent case of Gryger v. Burke, 334 U. S. 728, 68 Sup. Ct. 1256, speaking through Mr. Justice Jackson made the following very appropriate comment:

> **"Nothing in the record impeaches the fairness and temperateness with which the trial Judge approached his task. His action has been affirmed by the highest court of the commonwealth. We are not at liberty to conjecture that the trial court acted under an interpretation of the state law different from that which we might adopt and then set up our own interpretation as a basis for declaring that due process has been denied. We cannot treat a mere error of state law, if one occurred, as a denial of due process; otherwise, every erroneous decision by a state court on state law would come here as a federal constitutional question."**

The "due process" clause of the 14th Amendment was never intended to insure immunity from error or to provide uniformity of decision on all questions of substantive law in each of the forty-eight states. To this effect we quote as follows from Riley v. Worcester County Trust Co., 89 F. 2d 59:

> "It has been settled that that amendment does not assure immunity from judicial error or uniformity of judicial decisions."

To the same effect are the cases of Milwaukee Electric Railway and Light Company v. Wisconsin, 252 U. S. 100, 40 S. Ct. 306; McCauhey v. Lyall, 224 U. S. 558, 32 S. Ct. 602; Bristow Battery Co. v. Board of Commissioners of Rogers County, 37 Fed. 2d 504, and the very recent case of Biggs v. Ward, 212 F. 2d 209.

The citation of cases in support of the foregoing principles might be multiplied many times. However, the point in controversy appears so well settled that further reference to the authorities would be superfluous.

We do not wish to be misunderstood in our contention. We do not admit that the decision of our Court of Appeals is erroneous. To the contrary it was in accord with a long and well established rule of law in this jurisdiction (Louisville & N. R. Co. v. Farney, 295 Ky. 8, 172 S. W. 2d 656; C. & O. Railway Co. v. Williams, 300 Ky. 850, 190 S. W. 2d 549; Dillon v. Harkleroad, 295 Ky. 308, 173 S. W. 2d 419; Illinois Central R. Co. v. Applegate's Adm'x., 268 Ky. 458, 105 S. W. 2d 153, and Lewis v. Devasher [Ky.], 267 S. W. 2d 938). This formidable list of the authorities in this state is by no means exhaustive but it does serve to prove that the present plight of the Petitioner cannot be laid to any surprise decision of our Court. Either the Petitioner failed to apprise herself of the existence of such a rule or else she, with full knowledge of the existence of the rule, failed to take advantage of remedies that were once available to her. In either event this Court is not a panacea for lethargy and all other ills that may cause a disappointed litigant to overlook legal remedies that are available to him.

Insofar as we are advised, no valid reason has ever been assigned by the Petitioner as to just how or wherein the decision of our Court of Appeals has violated the "due process" clause of the 14th Amendment. In times past, the Petitioner has repeatedly referred to the rule of law

which was applied by our Court of Appeals as a "technicality". This offers no solution whatever to the ultimate question at hand. Doubtlessly, every losing litigant feels that the particular rule of law which contributed to or caused his defeat was a harsh and unjust "technicality". In the petition for the Writ, attention is called to the fact that the Greyhound Corporation might have been sued alone and that it was unnecessary to sue the driver. This may be quite true, but this Respondent is not responsible in the least for the fact that the driver was in fact sued. The Petitioner and her attorneys had the sole right to select their adversaries and they and they alone elected to join the driver as a party defendant. Having voluntarily done so, we are unable to see that the Petitioner has any cause for complaint.

Next, the Petitioner states that the jury would not have found against the Respondent unless it had believed that the driver was negligent. This is nothing but bald surmise and speculation. The jury did not return a verdict against the driver and it might have well have been due to the fact that it felt that the driver was not negligent. The Respondent could only act through its driver and therefore, it certainly should not be held liable if its driver was not also found to have been negligent. The verdict for the Petitioner against the Respondent alone may have well have been motivated by sympathy for the Petitioner. Such is certainly not unknown in the annals of jurisprudence. At any rate, the evidence is not now before the court. Any reference thereto or speculation thereon is outside the scope of the present inquiry. The principle governing the question at hand appears to us to be so well established that further elaboration is unnecessary.

The Petitioner also seems to make some complaint of the instructions given by the trial court at this late stage. It is intimated that the instructions are responsible for the failure of the jury to find against the respondent's driver.

She states that the jury was told that it might find for the plaintiff against either of the defendants and that it might also find a verdict against one defendant and in favor of the other. At no time has the Petitioner made any complaint of the instructions given by the trial court. Moreover, when the instructions were given, the Petitioner, through her attorneys, announced that she had no objections to the instructions. Certainly, this conduct constituted a waiver of any right that the Petitioner may have ever had to complain of the instructions. Aside from that, the objection now sought to be made comes entirely too late.

For each of the foregoing reasons, we earnestly submit that the Petitioner has not been deprived of her property without due process of law within the meaning of the 14th Amendment. Accordingly, the Petition for Writ of Certiorari should be denied.

CONCLUSION.

Rarely if ever does a court have an opportunity to render a decision to the complete satisfaction of everyone concerned. This case is no exception. The Petitioner chose the original forum of this litigation and she and her attorneys freely elected to sue the driver of the bus. She was accorded a fair trial before a jury in the county of her selection and when the jury returned the verdict which led to her eventual downfall she could, if seasonable request had been made, have required the court to request the jury to find either for or against the driver. Instead she remained silent. Thereafter, an appeal was taken to the highest appellate court in Kentucky and the decision now under attack was rendered. Truly, the Petitioner has been accorded not only "due process", but every process of law. Laggardness has served to deprive her of a remedy but the law and our Courts have afforded her every process known to any law.

The granting of the requested Writ would be akin to lifting the lid from the proverbial "Pandora's Box". If the requested Writ should issue no one is more aware of the disastrous consequences that would follow than are the members of this Court. The "Procrustean Bed" in which the Petitioner now lies was hewn and molded by the Petitioner and her attorneys and although it may appear somewhat hard and knotty to them, they should be compelled to lie in it. No amount of sympathetic pleading and pressure should be permitted to sway this Court from its long established principle. Clearly, "due process" in every sense has been given the Petitioner. The application for the Writ should be promptly denied.

Respectfully submitted,

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Attorney for Respondent.

SEP 12 1955

HAROLD B. WILLEY, Clerk

No. 165.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954.

EVELYN LEADMAN, *Petitioner,*

vs.

THE GREYHOUND CORPORATION,
Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION.

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No. 165.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954.

EVELYN LEADMAN, *Petitioner,*

vs.

THE GREYHOUND CORPORATION,
Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION.

IF THIS HONORABLE COURT PLEASE:

In a sincere belief that by its decision of February 4, 1955, the learned Court of Appeals of Kentucky, has deprived petitioner of a property right, without "due process of law," in violation of the "Due Process Clause" of the Federal Constitution, we respectfully submit this reply to respondent's brief in opposition to the writ, prayed for here.

(A) STATEMENT OF FACTS.

Evelyn Leadman resides in West Virginia. November 14, 1951, she purchased a ticket, at Lexington, Kentucky, destination Hazard, Kentucky, about 150 miles distant, and entrained on a bus belonging to respondent, for a journey to the last named place.

The bus reached Jackson, Kentucky, in good order, and resumed its run to Hazard. About three miles southeast from Jackson, the highway crosses Quicksand Creek, over a bridge. When this point was reached, the bus ran afoul the end of a steel bridge and turned over, permanently injuring petitioner, in the places and manner described in her complaint. She has never recovered from her injuries.

(B) THE BEGINNING AND END OF THE SUIT IN THE COURTS OF KENTUCKY AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY.

April 5, 1952, petitioner instituted action in the Circuit Court for Breathitt County, Kentucky, seeking recompense for her injuries (4),[1] against the Southeastern Greyhound Lines, and one Hamm, the operator in charge of the bus (1). When the answer of the Southeastern Greyhound Lines came in (11-12), it was to the effect that prior to the injury it had transferred all its assets, properties and franchises to the respondent. Hamm also answered (13-14), alleging that because of a slick section of the highway, the bus "skidded" and that the accident

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[1]Figures in parentheses refer to pages in the typewritten transcript filed with petition for certiorari.

was unavoidable. By amended petition (15-17). the Greyhound Corporation was brought in and thereafter participated in the trial of the case, using the same legal forces as represented the Southeastern Greyhound lines.

A trial of the case to a jury, resulted in a verdict for petitioner for $15,000.00 (41) against the Greyhound Corporation alone. This verdict was returned under instructions offered by respondent, to which there were no exceptions as follows (47):

"Instruction E."

> "You may find a verdict for the plaintiff against one of the defendants, and for the other, or you may find a verdict in one amount against one of the defendants, and a different amount against the other, or you may find a joint verdict against all of the defendants."

Judgment was entered on the verdict (41-42), and respondent moved the Court for a judgment in its favor (32). September 2, 1952, respondent filed in the United States District Court for the Eastern District of Kentucky its petition in Civil Action No. 151, against petitioner, the Clerk of the Breathitt Circuit Court, and petitioner's attorneys, seeking an injunction to prevent the enforcement of the judgment (111-115). The Federal Court denied the relief sought (112 F. Supp. 237). Then respondent went into the Court of Appeals of Kentucky, with the result of which petitioner here complains.

(C) THE QUESTIONS PRESENTED.

It seems to us that the record and circumstances of this case present for consideration the following questions:

1. Is a money judgment recovered by A, against B, a property right in A?

2. What is meant by "due process of law"?

3. Does the "due process clause" of the Fourteenth Amendment, protect one against arbitrary, capricious, improvident actions of State Courts, as well as from the same character of acts by state legislatures or executives?

3. If the highest Court in a state, fails and refuses to apply to the situation of a litigant before it, the settled rules laid down for the state by statute or decision, has the litigant been accorded "due process"?

4. Did the Court of Appeals of Kentucky fail or refuse to apply to petitioner and her case here, the prevailing rules it had established for like or similar situations?

(D) ARGUMENT.

I. (a) A judgment in favor of A, against B for money, invests A with a property right in the money adjudged.

(a) 12 Am. Jur., p. 348.

(b) Collins v. Welch, 75 F. 2d 894, 99 A. L. R. 1319, cert. den. 295 U. S. 762, 55 Sup. Ct. Rep. 921, 79 L. Ed. 1764.

(b) And such a right is protected by the "due process" clause of the Fourteenth Amendment.

(a) Cases cited supra.

In 12 Am. Jur., p. 348, it is said:

> "Rights acquired by a judgment are property rights which can not be taken without violation of the guaranty against due process.

II. What is meant by "Due Process of Law"?

(a) Stubbs, Germany in the Middle Ages, pp. 146-147.

(b) McKechnie, Magna Carta, Art. 39, p. 375.

(c) U. S. Const., Amendments 5 and 14.

(d) Ky. Const., Sec. 14.

We have no desire to be or appear pedantic, but this inquiry seems to be dictated by a requirement for logical presentation.

In 1037, in the 13th year of the reign of Conrad II, and in his first canon, we find, what we think is the first use of a phrase that foretells the concept of due process. The idea was there expressed as "The law of the Empire." In 1215, in its 39th Article, Magna Carta expresses the same idea in the phrase "the law of the land." In the Fifth and Fourteenth Amendments to the Federal Constitution it is referred to as "Due Process of Law," and in the Kentucky Constitution of 1891, Sec. 14, as "due course of law."

From all these different expressions of an underlying concept, it would seem that where a state through the highest Court, has laid down, by decision, rules to be applied to all cases that present like or similar aspects, it has charted the path of due process for the state.

III. The due process clause of the Fourteenth Amendment, guards against encroachment by either arm of the state government on the lives, liberties and properties of all citizens of the state.

(a) Shelly v. Kraemer, 334 U. S. 1, 68 Sup. Ct. Rep. 826, 92 L. Ed. 1161.

In Shelly v. Kraemer, 334 U. S. 1, 68 Sup. Ct. Rep. 826, 92 L. Ed. 1161, this Court, through Chief Justice

Vinson, has said that the Fourteenth Amendment, in its due process and equal protection clauses, guarded against the acts of the judiciary as well as against the acts of the legislative and executive branches of government, and that its commands are not restricted to situations where judicial proceedings were found to be procedurally unfair, but also to actions of state Courts in applying to a substantive common law, right, applicable principles which had been laid down by the Courts of the state, in such a way as to violate the guaranties of due process and equal protection clauses.

IV. It would seem therefore, to follow, ineluctably, that if the Court of Appeals of Kentucky, in this case, refused to apply rules that it has formulated for application to like or similar situations, petitioner has been denied due process. She may also have been denied the protection of equal laws.

Very little argument is needed on this point. The question developed in the next section of this brief, will establish whether the Court observed its own rules. It will also develop the fact that the cases cited by the Court in support of its opinion, have no application here, and do not touch the question presented.

V. Did the Court of Appeals of Kentucky, in this case, fail to apply to the situation presented, the substantive law of the state, which it had formulated for the resolution of like or similar situations? We say it did.

(a) Bowling Green-Hopkinsville Bus Company v. Adams, 261 S. W. 2d 14.

The Federal question in this case, was first brought to the attention of the Court of Appeals of Kentucky, in petitioner's petition for rehearing. And the Court modified its opinion with this observation:

> "The appellee has asserted that a reversal of this judgment, upon what appellee calls a 'technicality' would result in depriving her of property rights without due process of law in violation of the 14th Amendment to the Constitution of the United States. **We find no merit in this contention.**"

Just as easy as that. Without examination, and in utter disregard of the Court's own substantive rule announced in the case cited in the headnote.

As fortifying its abbreviated decision the Court cites, and respondent here relies on (a) Illinois Central Railway Company v. Applegate, 268 Ky. 458, 105 S. W. 2d 938, and (b) Lewis v. Devasher, 267 S. W. 2d 938. It will be found that neither of these cases support the rule that the Court of Appeals of Kentucky applied here.

It is to be noted there were three defendants named in this case. One of them went out and another—the respondent—took its place (See opinion of Judge Ford, 112 F. Supp. 237). Respondent owned the bus and was master; Hamm was its operator, or driver, and respondent's servant. He was charged with just two things in the operation of the bus: (a) to collect the fares, and (b) to operate the bus in such manner as that all passengers would have safe conduct. The vital issue was: Was the bus so operated by respondent's servant?

The Court remembers the instruction under which the jury returned a verdict against respondent alone (Ante p. 3). The verdict was one the jury, under that instruction could legally return.

Respondent says that petitioner can not have advantage of the judgment rendered on the verdict, because the jury did not find against the master's servant; and relies for authority on the two cases mentioned supra. We will now briefly examine those cases:

In the Applegate case, 268 Ky. 458, 105 S. W. 2d 153, the Court first took up the theory of earlier cases that recovery against a master rested upon a doctrine that the master and his servant, in case of a suable injury, were joint tort feasors. That theory had been advanced in Illinois Central Railroad Company v. Murphy, 123 Ky. 787, 97 S. W. 729, 11 L. R. A. (N. S.) 352 and was followed in a long line of cases, cited by the Court in the Applegate case. The Court exploded that theory, which was manifestly unsound, and announced the correct theory of the master's liability, on the doctrine of respondeat superior, from which came the notion, that in no case could there be a finding and judgment against the master, unless there was a finding of negligence on the part of the servant.

In Lewis v. Devasher, 267 S. W. 2d 938, the jury completely absolved the servant of negligence, thus:

> "Mitchell Lewis was the agent of Bessie Lewis. The jury returned a verdict finding Mitchell not guilty of negligence in operating the automobile" (S. W. Cit. 939).

Therefore there could be no verdict for damages solely against the master, since under the doctrine of respondeat superior, the master was required only to answer for the servant's negligence, if any.

Those two cases therefore have no application to the case at bar.

But the rule was laid down by the Court, in Bowling Green-Hopkinsville Bus Company v. Adams, 261 S. W. 2d 14, at 16,[2] through Judge Duncan:

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[2]In that case the same counsel who represent respondent here represented appellant there. They here are silent about the Adams case as was the Court of Appeals.

"The rationale of the Farney and Harkleroad cases was that a failure to make a finding against the servants evidence an intention on the part of the jury to find in their favor under the facts presented in those cases. These opinions do not establish the invariable rule that in every case, and under all circumstances, the failure to specifically find against the servant will be regarded as an affirmative finding in his favor. The problem is merely one of determining the intention of the jury as indicated by the verdict. In interpreting the verdict it is entirely proper to consider the instructions under which the verdict was returned. A consideration of the instructions given here makes it abundantly clear that the jury did not intend a verdict in favor of the driver. On the contrary we think the verdict, fairly interpreted, amounted to a finding against the driver.

And then (S. W. cit. 16), proceeds to relate the instruction under which the verdict was returned:

"The Court by instruction 8 informed the jury that it might find a verdict for each of the plaintiffs against all of the defendants, or against any one or more of the defendants, or that it might find against one defendant, and in favor of another, or if the finding was against more than one defendant, it might fix damages in different sums against each defendant. The concluding paragraph of this instruction was as follows: And for the purposes of this instruction, Mota E. Young and Bowling Green-Hopkinsville Bus Company, Inc., are to be considered one defendant.

In the instant case, the jury was hearing a description of an event, that took place in the vicinage. It was acquainted with the highway and the bridge; it knew as all reasonable men must have known, that if the bus were carefully guided, and was being operated carefully, having regard to the road conditions, it would not have collided with the end of a steel bridge, and tried to climb

it, and then turn over. It also knew that a verdict against the bus driver would be a useless manifestation, but that the master was able to respond in damages for the injury caused to petitioner. Under the instruction "E" (47), given at respondent's instance the jury could have the verdict which it did. Hence the rule that the Court should have made some effort to interpret the intention of the jury, instead of applying a hard and fast rule and should have observed the Adams case supra.

(E) CONCLUSION.

We respectfully submit our application for certiorari to the Court, asking that the writ be granted.

Cleon K. Calvert

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August 31, 1955.

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No. 165.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954.

EVELYN LEADMAN, *Petitioner,*

vs.

THE GREYHOUND CORPORATION,
Respondent.

PETITIONER'S PETITION FOR REHEARING.

IF THIS HONORABLE COURT PLEASE:

October 10, 1955, the Court denied certiorari in this case. A good faith conviction on our part, impels us to file this application for a re-consideration of that ruling.

(A) The Facts.

All pertinent facts are stated by us in our Reply to Respondent's Brief in Opposition, and on page 2 thereof. Our complaint here is that we have been denied *"Due Process,"* through the way and manner the Court of Appeals of Kentucky, dealt with the application of the law of Kentucky, to the facts, and to the verdict of the jury, and the judgment rendered in petitioner's favor.

(B) With Reference to This Case What Was "Due Process"?

It is our view that if a rule of law has been established in Kentucky, either through statute or decision, and the highest court in Kentucky, in considering a case before it, refuses to apply that rule, but relies on cases perfectly inapposite then *"due process"* has been denied. That, in our opinion is the yardstick that must govern this case.

(C) What Was and Is the Law of Kentucky, That the Court of Appeals of Kentucky Refused to Follow and Apply?

The law of Kentucky, respecting the interpretation of jury verdicts, in cases like this is set down in *Bowling Green-Hopkinsville Bus Company* v. *Adams,* (Ky.) 261 S. W. 2d 14. That rule, in brief, is that a verdict of a properly instructed jury is to be given effect, according as the intention of the jury is to appear on a consideration of the instructions of the Court, the facts produced, and the verdict itself. That is the rule applied in the *Adams* case, *supra.*

(D) Refusing to Apply the Rule in the Adams Case, the Court Relied On Two Cases That Had No Bearing on the Instant Case.

The Court, although its attention was specifically directed to the *Adams* case, *supra,* cited as authority for reversing the judgment of the Circuit Court, to cases that had no bearing, in any degree, on the problem before it. These two cases are discussed and analyzed in our reply to respondent's brief, and on pages 7 and 8 thereof, and following that discussion are excerpts from the *Adams* case, *supra.*

Since all these things are set down in our reply brief we will not repeat them here, for the Court may find them there with no trouble.

(E) Conclusion.

We think we are entitled to have the order of October 10, 1955, denying certiorari re-considered and re-heard. And we think we are entitled to the granting of the writ.

These measures we respectfully ask.

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November 16, 1955.

Certificate of Counsel.

The undersigned Counsel for Petitioner certifies to the Court that this petition for re-hearing is filed in good faith and not for purposes of delay; and that it is confined to what counsel considers substantial grounds for rehearing.

Two copies of this petition for rehearing have been forwarded by mail to Messrs. Stoll, Keenon & Park, Attorneys for Respondent, at 310 First National Bank Building, Lexington, Kentucky, which is their address.

This November ____, 1955.

_____,
CLEON K. CALVERT,
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Pineville, Kentucky.